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Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., Associational
Plaintiff, BETTY MILES, JOSEPH
GOULDEN, and JIM BOUTON, on behalf of
themselves and all other similarly situated,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 05 CV 8136 (DC)
ECF Case

**LOCAL RULE 56.1 STATEMENT OF UNCONTESTED FACTS IN SUPPORT OF
DEFENDANT GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT OR IN THE
ALTERNATIVE FOR SUMMARY ADJUDICATION**

Pursuant to Local Rule 56.1, Defendant Google Inc. (“Defendant”) respectfully submits this statement of uncontested facts in support of its motion for summary judgment or in the alternative for summary adjudication.

1. Research libraries house millions of books. Decl. Dan Clancy Supp. Def. Google Inc.’s Mot. Summ. J. (“Clancy Decl.”) ¶ 3.

2. Most books included in the Google Books Library Project are academic works. Clancy Decl. ¶ 3.

3. Most books included in the Google Books Library Project are non-fiction. Brian Lavoie and Lorcan Dempsey, *Beyond 1923: Characteristics of Potentially In-copyright Print Books in Library Collections*, 15 D-Lib 11/12 (2009), available at <http://www.dlib.org/dlib/november09/lavoie/11lavoie.html>.

4. Most books included in the Google Books Library Project are out of print. Clancy Decl. ¶ 3; Decl. Stephane Jaskiewicz Supp. Def. Google Inc.’s Mot. Summ. J. (“Jaskiewicz Decl.”) ¶ 4.

5. All of works in the Google Books corpus were published. Decl. Joseph C. Gratz Supp. Def. Google Inc.’s Mot. Summ. J. (“Gratz Decl.”) Ex. 3, Plas.’ Resp. Obj. Def. Google Inc.’s 1st Set Interrogs. No. 1 at B(1).

6. The Google Books corpus contains novels, biographies, children’s books, reference works, textbooks, instruction manuals, treatises, dictionaries, cookbooks, books of poetry, and memoirs, among other works. Jaskiewicz Decl. ¶ 4.

7. Beginning in the late nineteenth century, libraries indexed books using index cards, which recorded some bibliographical information and classified the book under a handful of subject headings chosen by librarians. Decl. Gloriana St. Clair Supp. Def. Google Inc.’s Mot.

Summ. J. (“St. Clair Decl.”) Ex. A ¶ 40.

8. In the second half of the twentieth century, the gradual digitization of card catalogues allowed library users to perform electronic searches for the names of authors and to search within a book’s title as well as a few subject fields per book. St. Clair Decl. Ex. A ¶ 41.

9. Electronic card catalogue searches do not allow a user to search for information not tied to the author, title, or one of the specific subject fields. Gratz Decl. Ex. 1, Courant Dep. Tr. 96:16-97:2.

10. Google Books allows a user to search the full text of the Google Books corpus using a query of the user’s own design. Clancy Decl. ¶ 7.

11. A search for “Archimedes” using Google Books locates many thousands of books in less than one second. Clancy Decl. ¶ 7.

12. A search for Archimedes using Google Books returns the most relevant books in the Google Books corpus that contain any reference to Archimedes. Clancy Decl. ¶ 7.

13. The ability to search electronically the full text of books can be achieved only by digitizing the full texts of those books. Gratz Decl. Ex. 1, Courant Dep. Tr. 96:16-97:2; Gratz Decl. Ex. 2, Aiken Dep. Tr. 104:7-105:2.

14. In 2004 Google began scanning books in the collections of several significant research libraries, including the University of Michigan and the University of California. Clancy Decl. ¶ 5.

15. A book is scanned at one of a small number of scan centers. Clancy Decl. ¶ 6.

16. Physical access to the scan centers is limited to Google employees and contractors. Clancy Decl. ¶ 6.

17. Images of the book pages are stored in a secure manner for processing.

Jaskiewicz Decl. ¶ 3.

18. Optical character recognition (OCR) is performed on the images to generate machine-readable text, which is also stored on Google servers. Jaskiewicz Decl. ¶ 3.

19. The Google servers on which books are stored are not publicly accessible. Decl. Brad Hasegawa Supp. Def. Google Inc.'s Mot. Summ. J. ("Hasegawa Decl.") ¶ 3.

20. The Google servers on which books are stored are protected by the same security Google employs to protect its own confidential information. Hasegawa Decl. ¶ 3.

21. Google is aware of no security breaches resulting in unauthorized access to books. Hasegawa Decl. ¶ 7.

22. Google analyzes each scan and creates an overall index of all the books that have been scanned. Clancy Decl. ¶ 6.

23. The Google Books index links each word or phrase appearing in each book with all of the locations in all of the books in which that word or phrase is found. Clancy Decl. ¶ 6.

24. The Google Books index allows a search for a particular word or phrase to return a result that includes the most relevant books in which that word or phrase is found. Clancy Decl. ¶ 6.

25. When a user performs a search, Google Books uses the index to generate search results for a user's query. Clancy Decl. ¶ 8.

26. The search results return a list of books in which that user's search term appears. Clancy Decl. ¶ 8.

27. A user can click on a particular result to be directed to an "About the Book" page. Clancy Decl. ¶ 9.

28. The "About the Book" page allows the user to obtain more information about the

book in question. Clancy Decl. ¶ 9.

29. The About the Book page includes links to sellers of the book. Clancy Decl. ¶ 9.

30. The About the Book page includes links to libraries listing the book as part of their collections. Clancy Decl. ¶ 9.

31. No advertisements have ever appeared on any About the Book page for any book that is part of the Library Project. Clancy Decl. ¶ 9.

32. In some uses of Google Books, users can also see a small amount of text from the book (a “snippet”). Clancy Decl. ¶ 10.

33. Google employs security measures to ensure that users cannot recover the entire text of a snippet view book. Hasegawa Decl. ¶ 4.

34. Google employs security measures to ensure that users cannot recover one complete page of a snippet view book. Hasegawa Decl. ¶ 4.

35. A user cannot cause the system to return different sets of snippets for the same search query. Hasegawa Decl. ¶ 4.

36. Google Books does not allow the searcher to copy the text of snippets. Hasegawa Decl. ¶ 4.

37. The position of each snippet is fixed within the page, and does not represent a “sliding window” around the search term. Hasegawa Decl. ¶ 4.

38. Only the first responsive snippet available on any given page will be returned in response to a query. Hasegawa Decl. ¶ 4.

39. One of the snippets on each page is blacklisted (meaning that it will not be shown). Hasegawa Decl. ¶ 4.

40. At least one out of ten entire pages in each book is blacklisted. Hasegawa Decl. ¶ 4.

41. Even if an “attacker” had a physical copy of the book in question in front of him, and used that physical copy to identify words appearing in successive passages to use as the basis for the attack, the most complete patchwork of snippets he could end up with would still be missing at least one snippet from every page and 10% of all pages. Hasegawa Decl. ¶ 5.

42. Not all books are placed in “snippet view.” Clancy Decl. ¶ 11.

43. Works whose text is organized in short “chunks” such as dictionaries, cookbooks, and books of haiku are excluded from snippet view. Clancy Decl. ¶ 11.

44. The determination whether to place a work in snippet view is made by human operators who examine each book to ascertain whether it is organized in short chunks. Clancy Decl. ¶ 11.

45. No book is designated for “snippet view” without a manual review. Clancy Decl. ¶ 11.

46. Google has a policy of excluding works a rightsholder has asked Google not to display. Clancy Decl. ¶ 11.

47. Any rightsholder can ask to exclude a book by filling out an online form which has been available since 2005. Clancy Decl. ¶ 11.

48. For excluded works, users may view bibliographic information about the book but not text from the book itself. Clancy Decl. ¶ 12.

49. Rightsholders may request that Google display text through the Partner Program. Clancy Decl. ¶ 13.

50. The rightsholder can choose what percentage of the text of the book to display as

part of the Partner Program. Clancy Decl. ¶ 13.

51. Most rightsholders in the Partner Program choose to display at least 20% of the text of their books. Clancy Decl. ¶ 13.

52. Over 45,000 publishers have included works within the Partner Program, including HarperCollins, Penguin, Simon & Schuster, and Macmillan. Clancy Decl. ¶ 14.

53. Google Books advances scholarly research. Gratz Decl. Ex. 5, Samuelson letter to Judge Chin at 1; St. Clair Decl. Ex. A ¶ 43.

54. A search on Google Books for “Steve Hovley” returns dozens of books that discuss that major leaguer, including *Ball Four* and a book about the 1969 Seattle Pilots (for whom Hovley played). Decl. Kurt Groetsch Supp. Def. Google Inc.’s Mot. Summ. J. (“Groetsch Decl.”) ¶ 12.

55. A search in of the catalogue of the Library of Congress produces no results for Steve Hovley. Groetsch Decl. ¶ 11.

56. A researcher searching the catalog of the Library of Congress for information about attorney Minoru Yasui will find only one book containing information about Mr. Yasui. Groetsch Decl. ¶ 13.

57. A search of Google Books for attorney Minoru Yasui will identify dozens of books available in bookstores and libraries with information about Mr. Yasui, from a reproduction of the Supreme Court filings in *Yasui v. United States* to an oral history of Japanese settlers in Oregon containing a whole chapter in which Mr. Yasui recounts his story. Groetsch Decl. ¶ 14.

58. Text from the books in the Google Books corpus was used as an input to the “n-grams” research project. Clancy Decl. ¶ 15.

59. The n-grams project provides a tool for users to determine how frequently different terms or phrases appear in books published at different times. Clancy Decl. ¶ 15.

60. The n-grams project has resulted in the publication of a paper in the journal *Science*. Jean-Baptiste Michel et al., *Quantitative Analysis of Culture Using Millions of Digitized Books*, 331 SCIENCE 176 (2011), available at <http://www.sciencemag.org/content/early/2010/12/15/science.1199644>.

61. Google entered into agreements with participating libraries pursuant to which the libraries' books would be scanned, after which the physical copies of the books would be returned to the libraries. Clancy Decl. ¶ 5.

62. The libraries promise contractually to abide by the copyright laws with respect to their copies. Clancy Decl. ¶ 5.

63. Pursuant to its agreement with Google, a library that has submitted a book to be scanned may make and download a copy of the scan of its book using a system called the Google Return Interface (GRIN). Jaskiewicz Decl. ¶ 6.

64. No library may use GRIN to make a digital copy created from another library's book. Jaskiewicz Decl. ¶ 8.

65. To make a copy, a library first submits a request to the GRIN system. Jaskiewicz Decl. ¶ 8.

66. The library's request to the GRIN system triggers the creation of an encrypted copy of the book that is placed on a secure Google server. Jaskiewicz Decl. ¶ 8.

67. Each book is encrypted, and each library has a unique encryption key. Jaskiewicz Decl. ¶ 8.

68. The library may download the encrypted copy of the book it made. Jaskiewicz

Decl. ¶ 8.

69. Some but not all of the books in the class have been copied by the libraries using GRIN. Jaskiewicz Decl. ¶ 9.

70. Where a library takes no action with respect to a particular book, the GRIN system does not do anything with respect to that book. Jaskiewicz Decl. ¶ 9.

71. No library has loaned out any digital copy it made using GRIN. Gratz Decl. Ex. 1, Courant Dep. Tr. 46:3-20.

72. Libraries have used the downloaded copies to make their own full-text indices of the works in their collections. Gratz Decl. Ex. 1, Courant Dep. Tr. 105:2-12.

73. Libraries have used the downloaded copies to make the digital copies available to the blind. Gratz Decl. Ex. 1, Courant Dep. Tr. 43:2-15.

74. Libraries have used the downloaded copies to archive digital copies for the purpose of preservation. HathiTrust Mot. Summ. J. at 3; *see also* Gratz Decl. Ex. 1, Courant Dep. Tr. 85:12-86:11.

75. The participating libraries have taken security precautions to protect their copies of works included in the Google Books corpus. Gratz Decl. Ex. 1, Courant Dep. Tr. 106:23-107:8.

76. There is no evidence that any security breach has occurred with respect to any of the library copies of works included in the Google Books corpus. Gratz Decl. Ex. 1, Courant Dep. Tr. 107:5-8.

77. No library has reduced its purchasing of books as a result of downloading of scans using GRIN. Gratz Decl. Ex. 1, Courant Dep. Tr. 108:15-19.

78. Libraries historically have not paid authors or publishers for the right to scan

books in order to index them. Gratz Decl. Ex. 1, Courant Dep. Tr. 112:6-9; St. Clair Decl. Ex. A ¶¶ 5(c), 9.

79. Libraries historically have not paid authors or publishers for the right to scan books in order to search them. Gratz Decl. Ex. 1, Courant Dep. Tr. 112:6-9; St. Clair Decl. Ex. A ¶¶ 5(c), 9.

80. One traditional way to promote book sales is to provide readers with the ability to browse books. Decl. Bruce S. Harris Supp. Def. Google Inc.'s Mot. Summ. J. ("Harris Decl.") Ex. A ¶¶ 10-14.

81. Books in bookstores are typically displayed on shelves or tables where they can be browsed. Gratz Decl. Ex. 2, Aiken Dep. Tr. 146:10-147:19; Harris Decl. Ex. A ¶ 15.

82. Browsing can occur through websites such as Amazon.com, where publishers and authors can agree to allow users to "Search Inside the Book." Harris Decl. Ex. A ¶ 17; Decl. Albert N. Greco Supp. Def. Google Inc.'s Mot. Summ. J. ("Greco Decl.") Ex. A ¶ 15; Gratz Decl. Ex. 2, Aiken Dep. Tr. 147:20-23.

83. Some but not all of the books at issue in this case can be browsed on Amazon's site using "Search Inside the Book." Decl. Judith A. Chevalier Supp. Def. Google Inc.'s Mot. Summ. J. ("Chevalier Decl.") Ex. A ¶¶ 40-42; Gratz Decl. Ex. 2, Aiken Dep. Tr. 183:20-184:20.

84. Search Inside the Book displays excerpts that are larger than the Google Books snippets. Chevalier Decl. Ex. A ¶ 47; Gratz Decl. Ex. 2, Aiken Dep. Tr. 183:20-184:20.

85. Rightsholders give permission for online browsing using "Search Inside the Book" without compensation to authors. Chevalier Decl. Ex. A ¶ 41; Gratz Decl. Ex. 2, Aiken Dep. Tr. 183:20-184:20.

86. The Authors Guild believes that online browsing has a net positive effect on book

sales. Gratz Decl. Ex. 2, Aiken Dep. Tr. 186:14-17.

87. The Authors Guild has recommended to its members that they make the entire first chapter of a book freely available on the Internet. Gratz Decl. Ex. 2, Aiken Dep. Tr. 176:1-8, 13-24.

88. The “Back in Print” program allows authors to digitize their out-of-print books and make them available for sale through a company called iUniverse. Gratz Decl. Ex. 2, Aiken Dep. Tr. 172:25-175:25.

89. William Morris is the largest literary agency in the world. Gratz Decl. Ex. 6, Zohn Dep. Tr. 12:24-13:9.

90. William Morris believes that inclusion in Google Books “is a fair use and not detrimental to the copyright owner in any way.” Gratz Decl. Ex. 7, Zohn Dep. Ex. 2 at 1.

91. Google Books has not displaced the sale of even a single book. Chevalier Decl. Ex. A ¶ 47.

92. A survey of authors has shown that the majority of authors approve of their inclusion in Google Books. Decl. Hal Poret Supp. Google Inc.’s Opp’n Plas.’ Mot. Class Certification Ex. 1 at 14, ECF No. 1001-1.

93. A survey of authors has shown that the majority of authors do not perceive any harm from their inclusion in Google Books. Decl. Hal Poret Supp. Google Inc.'s Opp'n Plas.' Mot. Class Certification Ex. 1 at 14, ECF No. 1001-1.

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Respectfully submitted,

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